Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES

OLIVER "BUCK" REVELL,

Petitioner,

v.

DAVID HOFFMAN, ESTATE OF ALEXANDER B. MAGNUS AND AMERICANS FOR RESPONSIBLE MEDIA, a corporation.

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE 10TH CIRCUIT

SUPPLEMENTARY APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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23 pp

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SUPPLEMENTARY APPENDIX

The Petitioner Oliver "Buck" Revell, by Stan Twardy, his attorney respectfully submits the Supplementary Appendix to his Petition for a Writ of Certiorari containing (1)The Judgement, (2)Order and (3) Administrative Closing in the U.S. District Court for the Western District of Oklahoma.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Case No. CIV-99-637-C

FILED
MAY 11 2001
DOCKETED

(1) OLIVER "BUCK" REVELL,
Plaintiff,

vs.

(1) DAVID HOFFMAN, an individual;
(2) FERAL HOUSE, a foreign corporation;)
(3) GENE WHEATON, an individual

(4) PAUL HUDSON, an individual;
(5) ALEXANDER B. MAGNUS;
an individual;
(6) AMERICANS FOR RESPONSIBLE
MEDIA, a foreign corporation,
Defendants

JUGMENT

Upon consideration of the pleadings herein, the Court finds that the motion for summary judgment of defendants Hoffman, Magnus, and Americans for Responsible Media should be granted, and judgment is therefore entered on behalf of these defendants and against plaintiff. The Court further finds that defendant Feral House was dismissed by Order entered

December 14, 1999, and a stipulation of dismissal as to defendant Gene Wheaton was filed May 3, 2000.

DATED this 11th Day of May, 2001.

ROBIN J. CAUTHRON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

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(1) OLIVER "BUCK" REVELL,

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(4) PAUL HUDSON, an individual;
(5) ALEXANDER B. MAGNUS;
an individual;
(6) AMERICANS FOR RESPONSIBLE
MEDIA, a foreign corporation,

Defendants.

ADMINISTRATIVE CLOSING ORDER

Pursuant to the Court being advised by plaintiff's counsel of the filing of a petition in Bankruptcy by the defendant Paul S. Hudson, it is hereby ordered that the Clerk administratively

terminate this action in his records without prejudice to the rights of the parties to reopen the proceedings for good cause shown, for the entry of any stipulation or order for any other purpose required to obtain a final determination of the litigation, within (20)days after the termination of the Bankruptcy proceeding.

Parties are further notified that during the administrative termination of this action, any applicable statute of limitations is tolled, provided that this action was originally filed within the proper time.

ROBIN CAUTHRON
UNITED STATES DISTRICT JUDGE

Entered in Judgment Docket on 5-11-01

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Case No. CIV-99-637-C

FILED
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(1) OLIVER "BUCK" REVELL,
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(1) DAVID HOFFMAN, an individual;
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(3) GENE WHEATON, an individual

(4) PAUL HUDSON, an individual;
(5) ALEXANDER B. MAGNUS;
an individual;
(6) AMERICANS FOR RESPONSIBLE
MEDIA, a foreign corporation,

Defendants

ORDER

Before the Court for consideration is the motion for summary judgment filed by defendants, Alexander B. Magnus ("Magnus") and Americans for Responsible Media ("ARM"), and adopted by defendant David Hoffman ("Hoffman").1 On the same date, plaintiff, Oliver "Buck" Revell ("Revell"), also filed a motion

for summary judgment. The parties have responded in objection to the opposing motions, and replies have been filed by both plaintiff and defendants. These matters are now at issue.

STATEMENT OF THE CASE

The undisputed facts of the case are as follows. Plaintiff, Oliver "Buck" Revell, served in the Federal Bureau of Investigation "FBI") for thirty years, rising to the second highest career position as the Associate Deputy Director. During his career in the FBI, Revell also served as Assistant Director in charge of the Criminal Investigative Division at FBI Headquarters, and Assistant Director for Administration. Revell also served on the Vice-President's Task Force on Terrorism, the National Foreign Intelligence Board, and the Terrorist Crisis Management and Deputies Committee of the National Security Council. He was also Vice-Chairman of the Interagency Group for Counterintelligence, and served as advisor to the President's Commission on Civil Aviation Security and Terrorism. In 1985, Revell was appointed Chairman of the Terrorism Committee of the International Association of Chiefs of Police, and still serves as a member of that committee. Revell has frequently testified before committees of the U.S. House of Representatives and the

U.S. Senate on a broad range of subjects. Revell frequently appears on national news media, including such programs as *60 Minutes, Face the Nation, and Nightline,* as an authority on issues involving terrorism.

Defendant Hoffman authored a book entitled *The Oklahoma City Bombing and the Politics of Terror.* Defendant ARM funded Hoffman to research and write this book.[2] On March 10, 1996, Hoffman entered into an author contract with Feral House to publish the book upon completion) See Feral House Author Contract, attached as Exhibit "D" to Defendants' Reply to Plaintiff's Objection to Their Motion for Summary Judgment. ARM also paid Feral House $6,000.00, as financial assistance towards publication of Hoffman's book. Hoffman began researching and writing a second book under the proposed title *Murdergate,* for which ARM also began providing financial assistance.[4] However, *Murdergate* has yet to be completed and published.

Defendant Magnus's name appears on the signature line of all the payments made by ARM to both Hoffman and Feral House. Although the parties do not dispute that ARM is registered as a non-profit organization, plaintiff asserts it is nothing more than

a sham operation and the alter-ego of Magnus, therefore Magnus is equally liable for the defamatory nature of Hoffman's writings. Plaintiff alleges Hoffman's writings include defamatory statements about plaintiff, which insinuate that during plaintiff's career he was involved with government conspiracies, obstruction of justice, drug smuggling, attempted murders, and other criminal activities. Plaintiff alleges defamation in the following specific passages from the 509-page book, *The Oklahoma City Bombing and the Politics of Terror*:[5]

1. In 1985, Wheaton was approached by security consultants to Vice President Bush's "Task Force on Combating Terrorism" who were working for USMC Lt. Colonel Oliver North and Associate Deputy FBI Director Oliver "Buck" Revell. "They wanted me to help create a 'death squad' that would have White House deniability to assassinate people they would identify as terrorists."... Wheaton claims the program continues to the present day. (p. 63).

2. On December 5, 1998, a Palestinian named Samra Mahayoun warned authorities in Helsinki that a Pan Am 747 leaving Frankfurt was to bombed [sic] within two weeks. (p. 170).

   What is interesting is that Oliver "Buck" Revell,former Counter-Terrorism chief of the FBI, pulled his son and daughter-in-law off Pan Am 103 minutes before the flight. Did Revell know something the rest of us did not? (p. 170, fn.**).

3. Several minutes before flight 103 took off from London's Heathrow airport, FBI Assistant Director

Oliver "Buck" Revell rushed out to the tarmac and pulled his son and daughter-in-law off the plane. (p. 313).

4. A number of VIPs were pulled off that plane. A number of intelligence operatives were pulled off that plane.

South African president Peter Botha and several high-ranking officials were advised by state security forces to change their reservations at the last hour. The South African State Security forces have a close relationship with the CIA.

As in Oklahoma City, this would become the catch-all phrase that would set everything right and prove the government had no involvement. Of course, this would be somewhat difficult in Revell's case, since he pulled his son and daughter-in-law off the plane minutes before it took off.... Interestingly, Revell was the FBI's lead investigator in the crash of an Arrow Air DC-8 which exploded on December 12, 1985 in Gander, Newfoundland, with the loss of all 248 personnel. (p. 317).

5. It was also an act that the U.S. shadow government, responsible for precipitating, was anxious to cover up. Had the true cause of the crash - [Oliver] North's double-dealing with the Iranians - been revealed, the Iran-Contra scandal would have surfaced two years before it had... "Buck" Revell would be on hand to make sure it didn't. (p. 318).

6. Oliver North and "Buck" Revell helped develop the policy of militarizing our law-enforcement. One example is the FBI, which is now being given sniper Training by the military. That training helped the Bureau massacre 86 people at Waco, the first time in recent history that the government violated the Posse Comitatus Act by using federal troops on American citizens. (P. 382.)

Plaintiff also alleges the proposed *book Murdergate* contains similar defamatory allegations against plaintiff regarding his career in the FBI.

Plaintiff asserts seven counts in his third amended complaint. Although plaintiff numerically sets out counts one through seven, he does not include any cause of action in the first count. Count two of plaintiff's complaint alleges defendant Hoffman's references to plaintiff in his writings constitute defamation per se. Plaintiff's third cause of action asserts allegations against Feral House only, which is no longer a party to this action. Plaintiffs fourth cause of action asserts allegations against Gene Wheaton only, who has also since been dismissed as a party to this action. Plaintiff's fifth cause of action asserts allegations of defamation against Paul Hudson, against whom, as plaintiff states in the complaint, the action cannot proceed at this time due to a bankruptcy stay. Plaintiff's sixth cause of action alleges defendant Magnus is liable for defamation for his role in financing and subsidizing Hoffman's works. Plaintiff's seventh cause of action alleges defendant ARM is liable for defamation due to its role in financing and promoting Hoffman's works. Plaintiff has entered into a stipulation with defendants stating and agreeing that

plaintiff"has not suffered any monetary damages or loss of earnings specifically attributable to any statements or materials published by defendants which are the subject of this lawsuit." Stipulation of Parties (docket no. 70). In sum, only plaintiffs counts two, six, and seven for defamation per se and conspiracy to commit defamation are now brought to issue by the motions for summary judgment filed by plaintiff and defendants.

STANDARD OF REVIEW

Summary judgment is proper under Fed. R. Cir. P. 56 only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Cir. P. 56(c). A material fact is one that might affect the outcome of the case under applicable law. Allen v. Muskogee, Okla., 119 F.3d 837, 839-40 (10th Cir. 1997). On summary judgment, facts presented in the motion and all reasonable inferences therefrom are construed in a light most favorable to the non-moving party. Id.

DISCUSSION

Plaintiff asserts defendants are liable for their actions in connection with the publication of *The Oklahoma City Bombing and the Politics of Terror* and the unfinished book *Murdergate,* which allegedly contain inflammatory and derogatory statements about plaintiff that constitute defamation per se. Defendants assert summary judgment in their favor is appropriate, arguing: (1) plaintiff is a public figure and cannot establish the requisite element of legal malice on behalf of the defendants; (2) the statements contained in *The Oklahoma City Bombing and the Politics of Terror* that reference plaintiff do not constitute defamation per se, and plaintiff has suffered no actionable libel; (3) plaintiff has made nofactual or legal showing that defendants conspired to defame plaintiff. Plaintiff asserts summary judgment in his favor is appropriate, arguing: (l) defendants have committed defamation per se and are liable as a matter of law; (2) defendants are joint tortfeasors in the conspiracy to defame plaintiff.

Plaintiff's status as either a public or private figure affects the standard by which his case for defamation must be measured. When a plaintiff is found to be a public figure, to recover for defamation he must show: "(1) The publication of a

defamatory statement; (2) That the defamatory statement was false; and (3) That the defamatory falsehood was made with 'actual malice' - made with knowledge that it was false, or with reckless disregard of whether it was false or not." Miskovsky v. Oklahoma Publishing Co., 654 P.2d 597, 590-91 (Okla. 1982); New York Times Co. v. Sullivan, 376 U.S. 254 (1964). Moreover,

> Those who, by reason of the notoriety of their achievements or the vigor and success with which they seek the public's attention, are properly classed as public figures and those who hold governmental office may recover for injury to reputation only on clear and convincing proof that the defamatory falsehood was made with knowledge of its falsity or with reckless disregard for the truth.

Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974). "The distinction between citizen and public official is properly made by the trial court at the summary stage of the proceeding." Strong v. Oklahoma Publishing Co., 899 P.2d 185, 1185 (Okla. Ct. App. 1995) (citing Hodges v. Oklahoma Journal Publishing Co., 617 P.2d 191 (1980)).

Plaintiffs career in the government, in particular the high echelons of the FBI where he had an influential role in fundamental issues of this country's national and foreign policy,

and his role as a public speaker on national broadcasts such as *60Minutes, Face the Nation, and Night-line,* illustrates his status as a public figure. Plaintiff admits that he was a public figure while serving the government, but argues that he is not a public figure now because he has been retired from the FBI for several years and his current activities are not of public concern, however, that plaintiff no longer holds the same position does not by itself strip him of his status as a public official. If the defamatory remarks relate to his conduct while he was a public official and the manner in which he performed his responsibilities is still a matter of public interest, he remains a public official within the meaning of New York Times. See Rosenblatt v. Baer, 383 U.S. 75, 87 n. 14 (1966). The context of the allegedly defamatory language at issue herein directly concerns the activities of plaintiff at the time he was an admittedly public figure within the government, and activities in which he was involved remain a matter of public interest. Accordingly, the Court finds that plaintiff is a public figure and the actual malice standard applies to his claim for defamation.

To survive summary judgement, plaintiff must present evidence from which a jury could find by clear and convincing

evidence that defendants published the allegedly defamatory statements about plaintiff with actual malice. As evidence of actual malice plaintiff asserts the defamatory statements speak for themselves; plaintiff has attested to the falsity of the statements by affidavit; and they were published with total disregard for the truth. Plaintiff also states as evidence of malice that defendant Hoffman has expressed great animosity towards law enforcement and prior writings show his tendency to indulge conspiracy theories; Hoffman wrote the book for financial gain; and it defies common sense to believe that plaintiff would commit the acts alleged during his service in the FBI. In addition, plaintiff asserts that the defamatory allegations written by Hoffman constitute an extreme departure from professional journalistic standards.

Even taking all of the evidence asserted by plaintiff as true, it is not sufficient to establish actual malice by clear and convincing evidence. "Actual malice cannot be established merely by showing that the publication was erroneous, derogatory or untrue." Herbert v. Oklahoma Christian Coalition, 992 P.2d 322, 329 (Okla. 2000) (citations omitted). To show actual malice, the New York Times standard focuses on "the defendant's attitude toward the truth or falsity of the statement alleged to be

defamatory," rather than "the defendant's attitude toward the plaintiff." Id. at 331. Plaintiff, as a public figure, must show more than an extreme departure from professional standards or personal malice on the part of defendants. Harte-Hanks Communications, Inc. v. Connaughton, 491 U.S. 657, 655, 667 n. 7 (1989).

Moreover, reckless disregard for the truth requires more than a departure from reasonable conduct and mere negligence. "There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." Id...,. at 688. Plaintiff has not made a showing, by clear and convincing evidence, that defendants knew of the falsity of the statements made, or that they recklessly disregarded the truth. Plaintiff has failed to show the statements published in *The Oklahoma City Bombing and the Politics of Terror* were written by Hoffman with actual malice. Because plaintiff's allegations regarding statements written in the unfinished work *Murdergate* also lack the necessary element of actual malice, the Court need not address, but merely notes, that any claim for defamation arising out of Hoffman's unfinished work also lacks the necessary element of publication.

Plaintiff has likewise failed to show actual malice of behalf of defendants ARM and Magnus. See St. Amant v. Thompson. 390 U.S. 727, 730 (1968) (actual malice must be proved separately as to each defendant). Moreover, where there is insufficient evidence to show Hoffman's writings constitute defamation, plaintiff cannot succeed on a cause of action against Magnus and ARM for conspiracy to commit defamation. Therefore his defamation claims as to these defendants cannot survive the summary judgment phase. Accordingly, the defendants' motion for summary judgment is granted, and plaintiff's motion for summary judgment is denied.

IT IS THEREFORE ORDERED that defendants' motion for summary judgment is granted. Plaintiffs motion for summary judgment is denied. A judgment shall be entered, accordingly, in favor of defendants, Alexander B. Magnus, Americans for Responsible Media, and David Hoffman as to counts two, six, and seven of plaintiff's third amended complaint. There are no counts in plaintiff's third amended complaint which remain against defendants Hoffman, Magnus, and Americans for Responsible Media. The only count which survives this order is

count five of plaintiff's third amended complaint, which remains stayed due to a bankruptcy filing by defendant Paul Hudson.

IT IS SO ORDERED this 3rd day of May, 2001.

ROBIN J. CAUTHRON

UNITED STATES DISTRICT JUDGE

FOOTNOTES:

1. Plaintiff previously dismissed defendant Feral House (docket no. 19), and a stipulation of dismissal was filed as to defendant Gene Wheaton (docket no. 37). In addition, a bankruptcy stay was entered as to defendant Paul Hudson (docket no. 36). Although the joint status report filed by the parties contains a stipulation that Mr. Hudson has been *dismissed* from this lawsuit, the record only contains a stay against him and is

devoid of an actual dismissal. At any rate, all the defendants which are currently active in this case, namely Hoffman, Magnus, and ARM, are parties to the motions at issue. If plaintiff intends to dismiss defendant Hudson, as implicated in the joint status report, the appropriate filings must be made with the Court pursuant to Fed. R. Civ. P. 41.

2. The record reflects that from August 1997 through May 2000, ARM paid Hoffman funds totaling $67,958.23 to research and write The *Oklahoma CITY Bombing and the Politics of Terror*. See Americans for Responsible Media "Register Quick Report," attached as Exhibit "A" to Plaintiff's Motion for Summary Judgment.

3. Plaintiff states in his third amended complaint that Feral House was dismissed after "it ecologically destroyed (pulped) all extant copies of the book 'The Oklahoma City Bombing in [sic] the Politics of Terror' in its possession." See Plaintiff's Third Amended Complaint, Count 3, p. 1 3. Therefore, it appears that Feral House did take the book out of print at some point after publication.

4. Plaintiff asserts ARM has paid Hoffman $4,250.00, to date, for the proposed book, "Murdergate." Although defendants

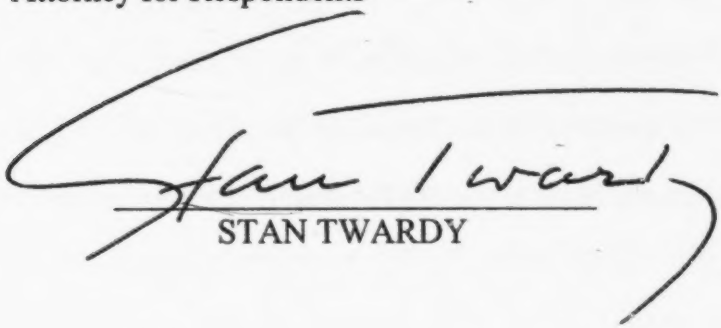
do not specifically dispute this amount, the payment records relied on by plaintiff only total $3,500.00. See Payment Records of Americans for Responsible Media attached to Plaintiff's Motion for Summary Judgment as Exhibits "C," "D," and "E."

5. Although plaintiff's citation to the listed passages in his motion for summary judgement statement of uncontroverted material facts appear, at least in part, to be paraphrased, the Court has quoted the direct pertinent language from the pages of the book attached as exhibits to plaintiff's motion and third amended complaint.

CERTIFICATE OF SERVICE

This is to certify that on May 8, 2003, three true and correct copies of the above and foregoing, were mailed, proper postage prepaid, to:

Michael Johnston, Esq.
228 Robert S. Kerr Blvd., Suite 620
Oklahoma City, OK 73102
Tel. 405-235-4074
Attorney for Respondents



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